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Dec. Dig. § 684.\* 13 Va.-W. Va. Enc. Dig. 875; 14 Va.-W. Va. Enc. Dig. 15 Va.-W. Va. Enc. Dig. 1089.]

Appeal from Circuit Court, Fauquier County.

Suit by H. Clay Bayly, Sr., and others against B. Elliott Curlett, and others, for the construction of a will and an accounting by a trustee. Decree for the defendants, and plaintiffs appeal. Reversed.

*Keith & Richards*, of Warrenton, for appellants.

*Lucien Keith* and *Wm. Horgan*, both of Warrenton, and *John S. Barbour*, of Fairfax, for appellees.

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CITY GAS CO. OF NORFOLK *v.* WEBB.

March 11, 1915.

[84 S. E. 645.]

**1. Appeal and Error (§ 173\*)—Petitions for Writ of Error—Sufficiency—Grounds.**—The defense of contributory negligence cannot be relied on on writ of error, where it was not mentioned in the petition for the writ.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 1079-1089, 1091-1093, 1095-1098, 1101-1120; Dec. Dig. § 173.\* 1 Va.-W. Va. Enc. Dig. 503; 14 Va.-W. Va. Enc. Dig. 80; 15 Va.-W. Va. Enc. Dig. 59.]

**2. Gas (§ 19\*)—Injury from Explosion—Contributory Negligence.**—One who lit a match near a manhole in which gas had been allowed to collect, thereby causing an explosion, was not contributorily negligent, though he knew that gas was escaping somewhere in the vicinity, but did not know that it was in the manhole, and at the time he struck the match he could not, because of the direction of the wind, smell the gas.

[Ed. Note.—For other cases, see Gas, Cent. Dig. § 15; Dec. Dig. § 19.\* 6 Va.-W. Va. Enc. Dig. 707; 14 Va.-W. Va. Enc. Dig. 497.]

**3. Gas (§ 18\*)—Injury from Explosion—Proximate Cause.**—The negligence of a gas company in permitting gas to leak into a manhole was the proximate cause of injury to one who ignited the gas by striking a match near the manhole in order to find the valve of a water pipe, even though the particular accident could not have been anticipated, since it should have been reasonably anticipated that some injury might result from the presence of the gas, in view of the frequency with which lights are struck in such a place.

[Ed. Note.—For other cases, see Gas, Dec. Dig. § 18.\* 6 Va.-W. Va. Enc. Dig. 706; 14 Va.-W. Va. Enc. Dig. 496.]

**4. Gas (§ 17\*)—Injury from Explosion—Degree of Care.—H-**

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

luminating gas is highly dangerous and explosive, and a gas company is bound to use all reasonable diligence to prevent an escape which may result in an explosion.

[Ed. Note.—For other cases, see Gas, Cent. Dig. § 14; Dec. Dig. § 17.\* 6 Va.-W. Va. Enc. Dig. 706; 14 Va.-W. Va. Enc. Dig. 496.]

Error to Law and Chancery Court of City of Norfolk.

Action by Lewis W. Webb against the City Gas Company of Norfolk. Judgment for plaintiff, and defendant brings error. Affirmed.

*W. H. Taylor*, of Norfolk, and *W. H. Anderson* and *A. D. Christian*, both of Richmond, for plaintiff in error.

*Bowden & Heard*, of Norfolk, for defendant in error.

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NORFOLK SOUTHERN R. CO. *v.* WHITE'S ADM'X.

March 11, 1915.

[84 S. E. 646.]

**1. Negligence (§ 83\*)—Last Clear Chance—Applicability of Doctrine.**—The doctrine of last clear chance does not apply to a case where the negligence of both plaintiff and defendant are simultaneous and concurrent, and, before it can apply, it must appear that defendant, on discovering plaintiff's peril, or by the exercise of ordinary care ought to have discovered it, negligently failed to do something which he had a clear chance to do to avoid injury to plaintiff.

[Ed. Note.—For other cases, see Negligence, Cent. Dig. § 115; Dec. Dig. § 83.\* 10 Va.-W. Va. Enc. Dig. 389; 14 Va.-W. Va.-Enc. Dig. 769; 15 Va.-W. Va. Enc. Dig. 726.]

**2. Railroads (§ 390\*)—Injuries to Persons on Track—Negligence—Contributory Negligence—Last Clear Chance.**—Where a pedestrian, walking in a place of safety between tracks, voluntarily entered on a track without looking for an approaching engine within a short distance of him, and the engine ran over him, there could be no recovery under the doctrine of last clear chance, because the negligence of the pedestrian and of the railroad company were so closely connected in point of time as not to afford the trainmen a plain opportunity to avoid the accident.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 1324, 1325; Dec. Dig. § 390.\* 10 Va.-W. Va. Enc. Dig. 389; 14 Va.-W. Va. Enc. Dig. 769; 15 Va.-W. Va. Enc. Dig. 726.]

Error to Circuit Court of City of Norfolk.

Action by the administratrix of Hiram White, deceased, against the Norfolk Southern Railroad Company. There was a judg-

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.